



**DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER
8725 JOHN J. KINGMAN ROAD, SUITE 4950
FORT BELVOIR, VA 22060-6222**

IN REPLY
REFER TO:

DESC-PH

September 20, 2005

Dear DESC Into-Plane Contractor,

Occasionally, DESC receives information that a DESC contractor may have provided illegal gratuities to Government personnel who purchase fuel at commercial airports. Such allegations have included the offering of free food, rental cars, taxi rides, and T-shirts. Given the serious nature of these allegations, I would like to take this opportunity to remind you of the prohibitions against providing unlawful gratuities to Government personnel.

DESC into-plane contracts contain specific clauses governing the offering and giving of gratuities to Government employees. DESC Intoplane Contract Clause I27 Gratuities and the criminal statute it implements prohibits the giving of gratuities to Government personnel when given with the intent to obtain a contract or influence favorable treatment under a contract. The phrase "gratuity" is defined to include any gift, favor, entertainment, transportation, lodgings, meals, services, training, or any other item having monetary value.

The pilot, flight commander, aircraft commander and crew chief are Government procurement officials. These individuals are the Government personnel who elect to fly into your location under the intoplane requirements contract and who, in fact, obligate the Government to pay for fuel purchased. When contractors provide personal incentives such as T-shirts, knives, mugs, caps, free rental cars, beer, and food to pilots or others who decide whether to land at a particular location, it can lead one to conclude that the contractor was providing these incentives with the intent "to obtain favorable action under the contract." When these incentives are based upon the volume of fuel lifted, it is even easier to make the inference.

Under 41 U.S.C. § 423 (h)(3)(i), giving gratuities to "procurement officials" is punishable by a civil fine of not more than \$1,000,000. In addition, the agency may also deny payment of any profit under the contract. Pursuant to the Gratuities Clause, when the agency head determines that the contractor offered or gave a gratuity to Government personnel and intended to obtain a contract or favorable treatment under the contract, the Government has the right to take the following actions:

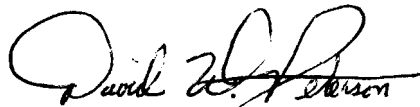
- 1.) to terminate the contract,
- 2.) initiate debarment or suspension action,
- 3.) assess exemplary damages of not less than three nor more than ten times the cost incurred by the contractor in giving the gratuities to the person concerned
- 4.) to pursue the same remedies as in breach of contract, and
- 5.) to pursue any other rights and remedies provided by law or under the instant contract.

DESC business shall be conducted in a manner above reproach with complete impartiality and without preferential treatment. The best policy is to avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. In order to ensure that the issue of gratuities is apparent and clear to both pilots and contractors, DESC has placed a gratuities warning on the reverse of the AIR Card.

If you suspect any unlawful activity concerning the soliciting or acceptance of gratuities, or conflict of interest, please disclose this information immediately to either the DESC Contracting Officer or DESC's Fraud Counsel, 703-767-5020. Action can only take place if we are informed of these matters. Please disseminate this information to your personnel in the hopes of educating them in conducting proper business practices.

If you have any questions, please call your respective Contracting Officer, Tammy Baltzell, at (703) 767-8469 or J. Ann Wilson at (703) 767-8467.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Peterson". The signature is fluid and cursive, with the first name "David" being the most prominent.

DAVID W. PETERSON
Chief, Intoplane Fuels Division
Direct Delivery Fuels
Defense Energy Support Center